IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7854 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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IBRAHIM HAJI ISMAIL PATEL TRUSTEE OF BAI FATMA - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR RS SANJANWALA for Petitioner(s) : 1,
MR SH SANJANWALA for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s)

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 17/01/2006

ORAL JUDGMENT

1.Heard learned advocate Shri Sanjanwala for the petitioner and Shri Gori, learned AGP, who appeared at the request of the Court on behalf of the respondents.

2. In the present petition, the petitioner has challenged the order passed in June 1992 by the Gujarat Revenue Tribunal in Revision No.TEN.BS.432 of 1992. The Gujarat Revenue Tribunal, by the impugned order was pleased to remand proceedings to the Mamlatdar ad ALT after making certain observations with respect to the issues arising in the said proceedings.

3. The short ground raised challenging the impugned order is that the petitioner had filed revision application before the Gujarat Revenue Tribunal challenging the order passed by the Deputy Collector and the State Government had not preferred any revision application against the order passed by the Deputy Collector. It is therefore, the case of the petitioner that the Gujarat Revenue Tribunal could not have set aside those findings of the Deputy Collector which were in favour of the petitioner, that too without putting the petitioner to notice thereof.

4. Reliance is placed on the decision of the learned single Judge of this Court rendered in Special Civil Application No.160 of 1990 and connected matters on 28.2.92.

5. I find that the ground urged by the petitioner is required to be upheld. The Tribunal was exercising

powers under section 38 of the Gujarat Agricultural Lands Ceiling Act. Section 38 of the said Act reads as follows:

> "38. (1) Notwithstanding, anything contained in the Bombay Revenue Tribunal Act, 1957, an application for revision may be made to the Gujarat Revenue Tribunal constituted under the said Act against any order of the Collector on the following grounds only:-
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> (a) that the order of the Collector was contrary to law;
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> (b) that the Collector failed to determine some material issue of law; or
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> (c) that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice
>
> (2) In deciding applications under this section the Gujarat Revenue Tribunal shall follow the procedure which has been prescribed by rules and regulations made under the Revenue Tribunal Act, 1957."

6. Upon reading the provisions contained in section 38 of the said Act, it can be seen that the order passed by the Collector can be revised by the Gujarat Revenue Tribunal on certain limited grounds. That does not, however, mean that in the revision application filed by the petitioner, the order under challenge cannot be examined on those grounds and if found to be not in order, the Tribunal cannot decide the same even if ultimately the same results into some adverse order being passed against the revision petitioner. In fact,

this is also not the contention of the petitioner. It is, however, contended that such power cannot be exercised to the detriment of the petitioner without putting the petitioner to notice. This contention is required to be accepted. In the revision application filed by a party if the Tribunal wishes to adopt some course which ultimately results into an order of the Collector which is to some extent in favour of the revision petitioner is required to be or is likely to be set aside, the petitioner should, at least, be put to notice thereof and only thereafter permitting the petitioner to make his submissions thereon the Tribunal could pass appropriate order in terms of the provisions of section 38 of the said Act. This would be the minimum requirement of natural justice. In the present case, without any further notice to the petitioner, the Tribunal set aside the order passed by the Deputy Collector which was partially in favour of the petitioner and remanded the proceedings for fresh hearing de novo. To that extent, the Tribunal committed a legal error.

7. In the result, the impugned order passed in June 1992 by the Gujarat Revenue Tribunal is set aside. The proceedings are remanded to the Gujarat Revenue

Tribunal for fresh consideration and disposal bearing in mind the observations made hereinabove.

8. With the above directions, the petition is allowed to the limited extent. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)